

Message Text

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EUR/NE - MR. BUELL

POLAD - MR. DIXON

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FM SECSTATE WASHDC

TO AMCONSUL HAMILTON

UNCLAS STATE 055809

E.O. 11652: N/A

TAGS: SENV, BD

SUBJECT: U.S.-BERMUDIAN AGREEMENT RE OIL SPILLS

REF: (A) STATE 223715 AND (B) HAMILTON 0028

1. REF. B REPORTED GOB ACCEPTANCE OF PROPOSED TEXT OF AGREEMENT, PROVIDED THAT AGREEMENT'S "HOLD HARMLESS" CLAUSE BE LIMITED TO ONLY THOSE CLAIMS AND CAUSES OF ACTION BROUGHT IN BERMUDIAN COURTS.

2. THIS CHANGE WOULD DENY THE U.S. THE PROTECTION OF THE "HOLD HARMLESS" CLAUSE IN MOST FORSEEABLE CASES. COAST GUARD ANTICIPATES THAT MOST OF THE CLAIMS AND CAUSES OF ACTION POTENTIALLY SUBJECT TO THIS PROVISION WOULD BE INSTITUTED IN U.S. COURTS RATHER THAN THE COURTS OF BERMUDA.

3. WHILE WE APPRECIATE INTEREST OF GOB IN WISHING TO LIMIT ITS OBLIGATIONS UNDER THE "HOLD HARMLESS" CLAUSE, THE PROPOSED LIMITATION IS NOT ACCEPTABLE, PARTICULARLY SINCE UNCLASSIFIED

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BERMUDA WOULD BE THE PRIMARY BENEFICIARY OF THE AGREEMENT

AS A WHOLE. WHILE GOB MAY HAVE AN INTEREST IN WISHING TO AVOID AN OBLIGATION TO "HOLD HARMLESS" THE U.S. IN ANY COURT IN THE WORLD, WE BELIEVE GOB SHOULD BE WILLING TO ASSUME SUCH AN OBLIGATION FOR CLAIMS AND CAUSES OF ACTION ARISING IN U.S. COURTS AS WELL AS BERMUDIAN COURTS.

4. ACCORDINGLY, US CAN AGREE TO PROPOSED CHANGE PROVIDED GOB PROPOSAL AMENDED TO READ "IN THE COURTS OF BERMUDA OR OF THE UNITED STATES."

5. SECTION WOULD THEN READ "THE GOVERNMENT OF BERMUDA SHALL DEFEND , INDEMNIFY AND HOLD FOREVER HARMLESS THE GOVERNMENT OF THE UNITED STATES, ITS AGENCIES, OFFICERS AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS AND CAUSES OF ACTION IN THE COURTS OF BERMUDA OR THE UNITED STATES WHICH HEREAFTER AT ANY TIME ARE MADE OR INSTITUTED FOR THE PURPOSE OF PURSUING OR ENFORCING A CLAIM FOR DAMAGES RESULTING FROM THE AFORESAID ACTIVITIES."

6. IF GOB AGREES TO THIS FORMULATION, POST MAY PROCEED TO CONCLUDE AGREEMENT. THIS MAY BE DONE BY SIGNATURE OF A SINGLE INSTRUMENT DONE IN DUPLICATE ORIGINALS OR BY EXCHANGE OF NOTES. IF LATTER FORM USED, PARA. 9 REFTL (A) SHOULD BE AMENDED TO DELETE WORDS "SHALL ENTER INTO FORCE UPON SIGNATURE AND GOB NOTE PROPOSING AGREEMENT SHOULD ALSO PROVIDE THAT GOB NOTE, TOGETHER WITH USG NOTE CONCURRING THEREIN SHALL CONSTITUTE AN AGREEMENT WHICH SHALL ENTER INTO FORCE ON THE DATE OF THE USG NOTE."

7. IF SIGNED INSTRUMENT FORM USED, TRANSMIT ONE SIGNED ORIGINAL TO DEPT. FOR ATTENTION L/T. IF NOTES EXCHANGED, SEND ORIGINAL GOB NOTE AND CERTIFIED COPY USG NOTE FOR ATTENTION L/T. INGERSOLL

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